

ILLINOIS LEGISLATION ON SLAVERY AND FREE NEGROES, 1818-1865.

(Mason McCloud Fishback.)

Perhaps it would be difficult to find many citizens of the State who are unacquainted with the general attitude of Illinois in the struggle which terminated in the great Civil War. The history of the State is too inseparably associated with the events of that period to render such a condition probable. The commonwealth which gave Lincoln and Grant to the Union could not easily forget the work of her illustrious sons. Although it would be possible to find but few persons ignorant of the part played by their State in the national struggle over the slavery question, it is very much to be doubted if there are many who are well informed as to the attitude of Illinois toward the same question within her own borders. When the war began and Lincoln issued his call for troops, there was a ready response from his home State. Too often, this condition is taken as a matter of course, but this conception is a very false one. Illinois was nominally a free state, but there is much in her history, (and this is not so very remote either) that might tend to refute this assertion. The question of slavery and free negroes played a large part in the life of the State. To show how this is illustrated in the laws of the commonwealth is the purpose of this discussion.

Although this paper deals with the period of 1818 to 1865, it is necessary to begin before this time in order to get a clear view of the situation in 1818. Slavery was originally established in Illinois by the French. Great Britain at the close of the French and Indian war in 1763 confirmed the right of the settlers to hold slaves. After Clark's expedition in 1778, Virginia acquired possession of the territory, and held it as a county under her jurisdiction. It was next transferred in 1784 to the general government. The bill ceding Illinois to the United States contained this clause: "That the French and Canadian inhabitants and other settlers of the Kaskaskias, St. Vincents, and the neighboring villages, who have professed themselves citizens of the state of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties."*

*Acts of Virginia. (See Ill., Revised Statutes, 1877, p. 17.)

1721—The 14th day of July, 1721, there were born two sons of the lawful marriage of Jacques Guillaume Bigoto, called La Laude. and Marie Titio. They were baptized conditionally the same day, because of the doubt as to their having been validly baptized privately, by me the undersigned, a priest of the order of the Society of Jesus, and rector of this parish. The first born was given the name of Etienne. His sponsors were the Sieur Etienne Hebert, and Agnes Philippe. To the second child was given the name of Gabriel. Gabriel Bertrand Cardinal and Magdelaine Quesnel were sponsors. They signed with me or made their mark.

N. IG. DE BEAUBOIS, Priest.

X A cross, mark of Hebert.

X cross mark of, Agnes.

bertrancardinal

M. M. mark of

Magdelaine Quesnel.

1721—The same year, 1721, the 11th of July, was born a daughter of the lawful marriage of Michel R8ensac and Susanne Annesac8c, who was baptized on the 15th of the same month by me, the undersigned, a priest of the order of the Society of Jesus, and rector of this Parish. I gave her the name of Magdalaine. The sponors were Louis Turpin and Agnes Philippe, who signed with me or made their mark.

Louis Turpain.

X

N. IG. DE BEAUBOIS,

A cross the mark of Agnes Philippe.

Priest.

1721—The same year, 1721, the 20th of July, was born a son of the lawful marriage of Pierre Pillet and of Magdelaine Barron. He was baptized the 29th of the same month by me, the undersigned, a priest of the order of the Society of Jesus, pastor of this Parish. He was given the name of Jean Baptiste. The sponsors are the Sieur Jean B Girardot, ensign in the Marine troops, and Marie Magdelaine Quesnel, who signed with me.

Mark a cross of

X

N. IG. DE BEAUBOIS,

Marie Magdelaine Quesnel.

Priest.

Girardot.

Chassin.

Lallemande.

Thus it is clear that there had been no change from the conditions existing under the French. Their right to continue slavery had first been approved by Great Britain and then by Virginia. But not long after this time, in the ordinance of 1787, slavery was emphatically prohibited in these words: "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in punishment for crimes whereof the party shall have been duly convicted."*

Thus it is seen that the Virginia deed of cession of 1784 and the ordinance of 1787 conflict. As a result two parties sprang up, one advocating the authority of the former, and the other declaring its faith in the latter. The pro-slavery party took the initiative as early as 1802, when it sent to Congress a memorial praying for the suspension of the article prohibiting slavery in the territory. This agitation was continued for several years, but in 1807, just two years before Illinois was separated from Indiana territory, upon a remonstrance being sent to Congress by the anti-slavery party the whole matter was dropped for the time being.

In 1807 a law was passed †which permitted masters to bring in their slaves, provided that immediately thereafter an indenture should be drawn up and recorded. If the slave should not consent to such an arrangement his owner was allowed sixty days to remove him from the territory. If the slaves were under 15 years of age, they could be held for several years—the males until they were 35, the females until they were 32 years of age. Male children born of indentured slaves were to remain in bondage until 30 years of age, while this was reduced to 28 in the case of females. The term of the indenture that was generally agreed upon was that of 99 years ‡. After the organization of the Illinois territory in 1809 this same law was adopted by the governor and judges, and their action was endorsed by the first legislature in 1812.

In 1817 a law was passed which provided for the repeal of as much of the above law as provided for the bringing of negroes into the State for the purpose of indenturing them as slaves. Governor Edwards, however, promptly vetoed the measure.§

This was the state of affairs in 1818. There seems to be no question that there was a large party which was radically in favor of the introduction of slavery. Moreover this party contained the majority of the leading men of the territory. The governor, Ninian Edwards, was a Southerner having been born in Maryland and brought up in Kentucky. Though a slave holder he was in favor of Illinois entering the Union as a free state. || Governor Bond, the first state executive, was not so firmly opposed to the introduction of slavery, and was willing to countenance its existence. The most of the people of

*Ordinance of 1787, Art. IV.

†Davidson and Stuvé; p. 314.

‡Gillespie, *Recollections of Early Illinois*, p. 9.

§Davidson and Stuvé: 316.

||Brown: *Slavery in Illinois*: 10-11.

the State held the same views * The ordinance of 1787 was the great barrier to the pro-slavery party. The fear that slavery agitation might postpone statehood, prevented radical measures being taken.

The first constitutional convention met in July, 1818. The journal of this convention is not now available. However, it is known that there was a great deal of discussion and strong feeling aroused over the subject of slavery. The controlling spirit of the convention was Elias Kent Kane. That Kane was strongly pro-slavery in his views, the convention struggle under Governor Coles clearly demonstrated.

What was really accomplished is best shown by an examination of the constitution itself. Article VI, the one which refers to slavery is as follows: "Neither slavery nor involuntary servitude shall hereafter be introduced into this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted, nor shall any male person arrived at the age of 21 years, nor female person, arrived at the age of 18 years, be held to serve any person as a servant, under any indenture hereafter made, unless such person shall enter into such indenture while in a state of perfect freedom, and on condition of a bona fide consideration received or to be received for their service. Nor shall any indenture of any negro or mulatto hereafter made and executed out of this State, or if made in this State, where the term of service exceeds one year, be of the least validity whatever, except those given in the case of apprenticeship"

Section II, of the same article, provides, that no person bound to service in any other state should be hired to work in Illinois except in the Saline tract near Shawneetown. The service should be for one year at a time, and such contracts were to cease altogether after 1825 Violation of these provisions was attended with the emancipation of the party concerned.

Section III, relates to indentured slaves. The indentures made under the territorial laws were to remain intact and in force. However, it was ordained that the children born after the formation of the constitution; of indentured parents should become free after a specified period of service. The male children were to serve until, they were 21, while the female children were released at eighteen.

Thus, it is seen that the question of slavery and of service formed a large part of our first constitution. Reasoning from effect to cause, it would seem that there must have been a great deal of discussion in the convention In fact it is known that the article on slavery was the subject of a heated debate, and was almost the only one over the adoption of which there was any excitement.

It was recognized before the convention met that this was going to be a disputed point, and as a consequence it was debated with great earnestness in the canvas † Ford states that in the election of

* Davidson and Stuvé: 316.

† Reynolds' "My Own Times": 209.

members to the convention the only questions placed before the people were regarding the right of the constituent to instruct his representative, and the introduction of slavery.

Considerable objection was advanced against the Constitution when it was presented to Congress. Tallmadge of New York objected to it on the ground that the prohibitory clause, if not actually sanctioning slavery, was not sufficiently strong.

The wording of the clause was that slavery "shall not hereafter be introduced." He objected to the use of the word *hereafter*. General Harrison and others thought that the prohibition was adequate. Tallmadge believed that the Illinois Constitution infringed upon the ordinance of 1787. His faction was a small minority, for when the question of admitting the territory into the Union was put, it was carried by a vote of 117 to 34.*

Although Illinois was known as a free State, her status on the slavery question was rather peculiar. The extent of the State north and south has brought it into touch with both factions in the United States. The southern half of the State was first settled and consequently the tide of immigration from Virginia, Tennessee and Kentucky—pro-slavery districts—gained an early control of the commonwealth, and directed the trend of Illinois politics.

The Constitution of 1818 was not referred to the people Shadrach Bond, the governor elect, and the majority of the other executive officers were either avowedly for slavery, or passive in their attitude toward its introduction.

Once admitted into the Union the process of legislation began. This early included the subject of slavery and free negroes. At the second session of the First General Assembly, which met Jan. 4, 1819, a stringent slave code was adopted †This act of March 30, 1819, "An act respecting free negroes, mulattoes, servants and slaves," was the first of a long series, the provisions of the most of which remained in the statutes of the State until 1865. This act of 1819 is important not only in point of time, but with respect to its relation to those which follow. It is not only the forerunner of the rest, but the parent as well. All of its successors were in reality amendments to it, although not always so styled in their titles. Since the importance of this act is so great, it is necessary that a close examination of its various features be made, and its different sections analyzed.

SECTIONS 1—2. Previous to settling in the State the negro or mulatto had to produce a certificate of freedom under seal of a court of record. This was to be endorsed by the circuit clerk of the county in which he wished to reside, together with the date, name and description of himself and family. The overseers of the poor, however, were empowered to remove any negro from the county who had failed to comply with the provisions of the poor law.

*Annals of Congress, 1818-1819: 309-311.

†Laws of Illinois, 1819-1821: 354.

§ 3. It was provided that it was unlawful for any one to bring in a slave for the purpose of freeing him. In case this was done, however, a bond of \$1,000 was required as a guaranty that the former slave would not become a county charge. Failure to comply with this section was attended with a fine of \$200 for each emancipated slave.

Sections IV and V.—These sections related to free negroes already residing in the State. They were to file name, description, and evidence of freedom, with the circuit clerk. Once recorded this was considered sufficient evidence of freedom. No negro unprovided with such a certificate was eligible for employment, and anyone having such a negro was to be fined \$1.50 for each day's work performed.

Section VI.—Anyone knowingly harboring a slave, or preventing the recapture of the same was to be guilty of felony, and was to be punished accordingly.

Sections VII and VIII.—Every negro found without a certificate of freedom was to be considered a runaway slave, subject to arrest and commitment by a justice. He was then for six weeks to be advertised by the sheriff, and in the meantime not having established his freedom, was to be sold for the period of one year. If at the end of this time he had not been claimed he was to be given a certificate of freedom, which should guaranty his freedom unless he were subsequently claimed by his owner. The "taker up" or the one who informed against him, was to receive \$10 00 or the reward offered by the owner. After his release the negro was to receive the amount of the wages for which he had been hired. Any person gaining possession of a free negro by false swearing was to be punished for perjury.

Section 9.—This section prohibited kidnapping, it being provided that anyone forcibly taking a free negro or indentured slave out of the State—excepting masters removing their runaway slaves—was to pay a fine of \$1000 to the injured party.

Sections X and XXV.—The remaining sections of the code deal with the relation of the servant or slave to his master and to the public in general. The master was to provide suitable food and clothing for his servants, and at the end of the period of service was to supply him with a special outfit of clothing. Servants guilty of misbehavior or laziness were to be corrected by stripes. In case of mistreatment the servant was to find redress in the circuit court. If he became sick or lame, or otherwise incapable of service, he was nevertheless to be maintained until the end of his period of service. A negro was not allowed to purchase as a servant anyone not of his own color. This, of course, was to prevent negroes from holding *white* slaves. Commercial dealings of all kinds, without the consent of the masters were prohibited under penalty of forfeiting to the latter a sum equal to four times the amount of the transaction. Where free persons were to be punished by fines, negroes and slaves were to receive whippings, at the rate of 20 lashes for every \$8 00, though no offender was to receive more than 40 at one time. Upon being found 10 miles away from home without a permit, the servant was liable to be taken

before a justice and to receive 35 stripes, while ten were administered if he appeared at any dwelling or plantation without leave. Unlawful assemblages and routs of all kinds were prohibited, while any person permitting dancing or reveling by slaves on his premises could be fined \$25 00. It was the duty of the county officers to assist in the apprehension of slaves guilty of any such misconduct.

This code was in fact a re-enactment of the territorial laws regarding slavery, such a revision being necessary on account of the change in the form of government. Naturally, the law which permitted the introduction of slaves from the slave states was omitted. The section which, perhaps, is open to the most criticism is the ninth, which related to kidnapping. The clause stated that \$1,000 should be given the *injured* party, and not to the one who should cause the offender's arrest. When the victim was carried so far south as to prevent his return, the remedy was stolen with him. In the second place, the penalty was insufficient, for in case the kidnapper was not able to pay his fine, no other punishment was provided. This was the "condition of the kidnapping scoundrels in 99 cases out of a hundred. Again, many of the ignorant blacks were enticed out of the state by fraud and deceit and then forcibly taken and sold into slavery. To prevent this the law made no provision." *Kidnapping was very common at this time, the sentiment in the southern part of the state being specially favorable to its practice.

Ford, in his history of Illinois† thinks that the object of these laws was partly to prevent free negroes from becoming numerous in the State, and partly to discourage slaves from escaping to Illinois in search of freedom. He furthermore thinks that such an object was highly commendable when one stops to consider the importance for the sake of harmony and good government of preserving the homogeneous character of the people. Of course it is idle to speculate as to what might have happened if a different course had been followed, but it would seem that the danger of the State being overrun with large numbers of blacks was highly exaggerated. As a majority of the early settlers were from southern states, they unconsciously—as Ford believes—imported these laws along with a number of others, although they did not fit into the new conditions. He shows how laws were adopted from the south for the inspection of tobacco and hemp, when neither was an Illinois product. It is possible these laws were passed for the above reason, but it does not seem improbable that the contrary might be true. If the early legislators were largely from the south, they certainly had the interest of their native section at heart. In fact the history of the commonwealth both before and after the passage of these laws (1819) certainly proves this to be true. If it is reasonable to believe that the act of 1819 was unconsciously passed by slavery sympathizers, how much more credible it is that these same persons were alive to their opportunity, and were taking advantage of it. Such a code, no doubt, would have been justifiable in a slave state where the number

*Davidson and Stuvé, 317.

†Ford; History of Illinois, 34.

of blacks would have necessitated measures of this kind, but in Illinois, out of a population of 55,162 (in 1820) there were only 917 slaves, and many of these were simply indentured and registered servants.*

In August, 1822, occurred the second State election. There were four candidates for the governorship, Phillips, Browne, Moore and Coles. The first two were pro-slavery in their views. Moore was an independent candidate, although he was nominated by the military faction. Coles had been private secretary to President Madison and had been appointed register of the land office upon his removal to Illinois. Upon his arrival from Virginia he had set free his slaves and had established each family upon a quarter section of land. He believed that slavery was wrong, and was actively opposed to it throughout his life.†

While the question of making Illinois a slave State was not one of the express issues of the campaign, "it was in the air" and certainly had some influence upon the election.‡ Coles was successful, receiving 2,854 votes, Phillips 2,687, Browne 2,443 and Moore 622. Coles' plurality was but 167 and he was in a minority of the total vote cast.§ The lieutenant governor, Hubbard, was a pro-slavery man, while a majority of the legislators were pro-slavery also.

The new governor delivered his inaugural address Dec. 5, 1822, and then there began his fight against slavery in Illinois. He called attention to the fact that, notwithstanding the ordinance of 1787, slavery still existed in the State.

He recommended|| that the legislature put an end to the practice and that it adopt more effective means against kidnapping, which seems to have been very common at this time, and "That justice and humanity required of us a general revisal of the laws relative to negroes, in order the better to adapt them to the character of our institutions and the situation of our country."

A committee was appointed to consider the governor's message, a special one being named for that portion referring to slavery. The latter, as was to be expected, brought in an adverse report.¶ It declared that although restrictions against slavery were imposed in the first Constitution, at the present time the State possessed the same right as the State of Virginia to alter her Constitution or to settle the slavery question.

It was considered that the best means to accomplish this would be to call a convention to alter the Constitution. To submit this to the people it was necessary that a resolution be passed by a two-thirds vote. The pro-slavery men had enough votes in the Senate, but in the house just one was lacking, a member by the name of Hansen, in whom they had counted, having voted against them.

*Davidson and Stuvé, 311.

†Washburne; Sketch of Edward Coles: 17.

‡Moses' Illinois: Historical and Statistical: 309.

§Washburne; Sketch of Edward Coles: 58-59.

||Washburne; Sketch Edward Coles: 65.

¶See Moses: 316.

Hansen's election had been contested at the beginning of the session by a John Shaw, but the committee on elections had reported unanimously in favor of the former. This episode was now remembered and the House decided to reconsider the matter. The result was, in brief, that Shaw was recalled and the resolutions calling the convention were adopted.* The thing now to be done was to defeat the measure at the polls.

The great majority of the political leaders of the State were against Coles.† The newspapers were about evenly divided. The most of the common people of the State were supporting the Governor.

The election, Aug. 2, 1824, after a very heated campaign, gave the anti-convention party a majority of 1,668 out of 11,612 votes ‡

During this struggle Governor Coles was subjected to a great deal of abuse and annoyance, and whatever could be done to injure him was attempted. In 1824 a suit was brought against him in the county of Madison for neglecting to comply with the provision of section 3 of the act of March 30, 1819. This § provided that anyone bringing slaves into the state for the purpose of setting them free should execute a bond of \$1,000 in guaranty that the emancipated slave should not become a county charge. Failure to do this was attended with a fine of \$200 for each slave set free. The act was passed a month before Coles came to Illinois, but was not published for several months afterwards. As a result Coles had failed to comply with the law when he emancipated his slaves. The suit was begun in the March term, but went over till September when a verdict of \$2,000 was rendered against the defendant. A motion for a new trial was made, but not being terminated, the case was continued to the March term in 1825. In the meantime (January) the legislature passed a law releasing all persons from penalties incurred in this way.|| Thereafter each person was immediately to comply with the requirements of the law. In other words, a second chance was given to any who had unwittingly neglected this matter. This amendment was passed especially in the interest of Governor Coles, in order to release him from this unfortunate lawsuit. He was acquitted, but not until the case was carried to the supreme court.

Governor Coles delivered his valedictory message Dec. 6, 1826. In this last address ¶ to the legislature he again took occasion to refer to the slavery question, and as a digest of the laws and a new criminal code were to be adopted during this session, he earnestly recommended that the laws referring to negroes be revised and be made less repugnant to the conditions in Illinois. But if the Assembly should not see fit to abolish slavery he would have them adopt such measures as would ultimately put an end to it. But even if this could not be done, he urged that the provision compelling children, born of indentured slaves, to remain in bondage up to a certain age should be swept away. He also advocated more protection for free negroes

*Washburne: Sketch of Edward Coles: 73.

†Ford's History of Illinois: 53.

‡Ford's History of Illinois, 55.

§Washburne. Sketch of Edward Coles, 199.

||Laws of 1825-1850 or Washburne's sketch of Edward Coles, 203

¶Senate Journal, 1826; 21-22.

Although he was not in favor of encouraging their immigration, he thought that the State should furnish protection for those who were already within its borders. In conclusion he urged a change in the general attitude toward the negro, and that instead of being considered a slave until proven free, the contrary should be the case.

This was the third time that Coles had called attention to this subject. The first occasion was in his inaugural speech, Dec. 5, 1822, and the second in his message to the extra session of the Legislature, Nov. 18, 1824. Whatever one may think of Coles' method of procedure and his lack of tact, he cannot fail to admire his wonderful earnestness and zeal.

With the exception of the act of 1825 the "black code" remained unaltered until 1829*. In that year an act was passed January 17, which related especially to free negroes. It contains four sections, the first two of which were largely reproductions of sections one and two, and seven and eight of the act of 1819. No colored person who was not a citizen of another state could gain a residence in Illinois without first filing a certificate of freedom in the county commissioner's court and giving \$1000 bond that he would be self-supporting. It will be seen that in this act the responsibility was placed upon the negro himself. No bond was required of a free negro by the former act. He simply had to file a certificate of freedom with his circuit clerk. It must have been almost impossible for a negro to gain a residence under these conditions. This was but one more barrier to the immigration of free negroes.

Anyone failing to observe these rules and hiring or harboring a negro who had not complied with the law was liable to a fine of \$500. Section two details the manner of dealing with runaway slaves, which is practically the same as that set forth in the first act. If a slave should escape to this State (section 4) and afterwards institute a suit to procure his freedom, he should at once be turned over to the sheriff who should deliver him to his owner.

In section three a new point is dealt with which the former act had failed to consider. The intermarriage of whites and blacks was very strongly prohibited; such marriages were to be null and void and punishable by fine, whipping and imprisonment for a period not less than one year. Officials taking any part in such ceremonies were to be fined \$200 and were to be ineligible for re-election.

The act of 1829 was amended February 1, 1831†. This amendment reiterated the necessity of the negro giving a bond. In addition the act provided that a fine of \$100 should be imposed upon any one aiding a negro, in any way, to gain a settlement in the State. This act is a distinct amendment to the act of 1819 and is far more severe. The latter provided that a slave owner could bring his slaves into the State and free them, provided he gave a bond for their self-support.

*Revised Laws of 1833; 463-465.

†Laws of 1831; 101.

The act of 1831 makes no exception whatever. The sentiment against the blacks must have been pretty strong that such a law could have been passed. The violators and the opponents of this law however must have been many, for at the next meeting of the legislature it was found necessary to pass another amendment discharging from penalties all those who had violated the third section of the act of 1819.* As was shown above, an amendment was passed in 1825 affecting this very point. Without a careful reading, one would suppose that the two amendments were identical, with the exception of some minor differences in wording. But the second is much more comprehensive than the first. The latter provides, "that any person who may have failed or neglected to comply with the provisions of the third section of the act above recited, and to which this is an amendment, shall be and they are hereby released, and entirely discharged from any penalty incurred under the provisions of the said act or from any verdict or judgment rendered against them in any of the counties of this State" * *. The amendment of 1833 reads: "That any person who may have failed or neglected *or may hereafter fail or neglect* to comply (the italics are mine) with the third section of the act to which this is an amendment, shall be and they are hereby released and entirely discharged from the penalty incurred *or to be incurred* under the provisions of the said act" * * * *. That which follows in each case is that the party shall proceed at once to comply with the requirements of the act. The first amendment, as was seen, was passed during the administration of Governor Coles and expressly for his benefit. No provision was made for the future violation of the act, and of course none could have been made for those who may have failed to comply with the act of 1831. Hence the necessity of making the provisions of the act of 1825 more general. Apparently there was no opposition to the passage of the law of 1833, as no discussion is recorded in the journals.

The act of Feb 19, 1841, to which also there was no opposition, provided† that every native resident negro in the State should be permitted to file with the circuit clerk the names of himself and members of his family, together with their evidences of freedom. Thereupon the clerk was to issue a certificate of such record, which was to be *prima facie* evidence of his or her freedom, carrying with it the protection of the law. However, this act was not to be construed to bar the lawful claim of anyone to the negro in question.

During this period, from 1818 to 1848, there were several bills introduced relating to slavery and to negroes which failed to pass, partly, I believe, because of direct opposition, but largely owing to indifference. The House and Senate journals are very unsatisfactory, as scarcely ever is the text of any bill recorded. In the Senate journal of 1835-6 an "Act in Relation to Runaway Slaves" is found

*Revised Laws of 1833; 466.

† Laws of 1841, 1:9, 190.

introduced.* It was reported to a committee of three, two members of which were from northern counties. The latter probably opposed it, for it never came up again. In the Senate journal of 1834-5 is found mention of a bill referring to negroes and mulattoes, which after a second reading was laid upon the table and ultimately lost sight of †

In the first session of the Ninth General Assembly a resolution was introduced by Maxwell, of McDonough and Warren counties, regarding the immigration of negroes ‡ The resolution was as follows: "*Resolved*, That the committee on the judiciary be instructed to enquire into the propriety of amending the law concerning negroes, mulattoes, etc., so as to prohibit their introduction into the State for the purpose of gaining settlements, under any pretence whatever; and that they report by bill or otherwise." Though no action was taken respecting these resolutions they are important in showing how this question is thus early beginning to attract attention.

In the tenth general assembly the famous Lincoln resolutions were introduced. During this session Governor Duncan had sent to the legislature reports and resolutions from several of the states denouncing abolitionists. As a result the assembly passed a set of resolutions which denounced abolition societies, and maintained the right of slave-holding by the south, and declared that Congress could not abolish slavery at the seat of government without the consent of the people of the district §

Lincoln could not endorse these resolutions and took occasion to record his protest. The importance of the latter as showing Lincoln's position at this time will justify quoting in full :

"Resolutions upon the subject of domestic slavery having passed both branches of the general assembly at its present session, the undersigned hereby protest against the passage of the same.

"They believe that the institution of slavery is founded on both injustice and bad policy but that the promulgation of abolition doctrine tends rather to increase than abate its evils.

"They believe that the Congress of the United States has no power under the constitution to interfere with the institution of slavery in the different states.

"They believe that the Congress of the United States has the power under the constitution to abolish slavery in the District of Columbia, but that the power ought not to be exercised unless at the request of the people of the District.

"The difference between these opinions and those contained in the above resolutions is their reason for entering this protest.

(Signed)

DAN STONE.

A. LINCOLN.

Representatives from the County of Sangamon.||

* Senate Journal, 1835 6, 154, 199.

† Senate Journal, 1834 5 371.

‡ House Journal, 1834-5, 61

§ See Nicolay and Hay: Abraham Lincoln 1: 150.

|| Most accessible in Lincoln's Speeches I: 15, Nicolay and Hay.

The sentiment in different parts of the State against abolition was very strong, and in Alton culminated in the death of Lovejoy, Nov. 7, 1837. Instead of silencing the opponents of slavery, this incident increased their enthusiasm. Petitions were sent to the Legislature of 1838-9. Two of these were presented in the House* Jan. 29, 1839. Two days later Calhoun of Sangamon, took these as a text for a set of resolutions. His statement was confined to three points: First, that Illinois should openly declare her position on the slavery question; second, that Congress possessed no right to abolish slavery at the seat of government, or in the several states, and that the question of slavery should not be considered in the admission of a state into the Union; third, that the laws against negroes as a class should not be abolished. The immediate adjournment† of the Legislature prevented any action being taken on these resolutions.

"An act for the safe-keeping of runaway slaves" was the title of a bill introduced in the first session of the Eleventh General Assembly, 1838-9 ‡ After a second reading it was laid on the table. Shortly afterwards an amendment to the "act in relation to free negroes" was introduced § When it came up for third reading it failed to secure a sufficient number of votes. The journal does not record the text of the bill, and so its exact nature is not known.

During this decade the southern part of the State manifested a great deal of interest in, and sympathy with, the neighboring slaveholding states at the loss of their escaping negroes. A bill for the apprehension and safe keeping of fugitive slaves was introduced in the Thirteenth General Assembly, 1842-3, although nothing came of it.¶ February 7, 1843, Senator Dougherty of Union county, expressed this sympathy in a set of resolutions. After expressing regret at the increasing number of desertions, he proposed to remedy this evil (as he viewed it) by the united action of all the states in the Mississippi Valley. To this end he advocated the calling of a convention to meet in Illinois for the consideration of this problem. No final action, however, was taken.¶ During the session of 1844-5 Representative Hick of Gallatin, recommended a bill for an act to prevent the stealing and enticing away of slaves **. A motion to lay the bill on the table was defeated, 78 to 11. The bill passed the House without any difficulty and probably would have been equally successful in the Senate had not the Legislature adjourned a few days later, thus preventing its passage.

Perhaps it would be well to pause here to examine some of the particular restrictive measures against negroes as a class. They held an inferior position in the body politic, and were to a large extent ignored. In cases of law the negro's evidence had no weight against that of a white—in fact his testimony was not listened to at

*House Journal, 1839, 301.

†House Journal, 1839, 322.

‡Senate Journal, 1839, 62.

§Senate Journal, 1839, 222.

¶Senate Journal, 1843, 124, 167, 329.

¶Senate Journal, 1843, 314.

**House Journal, 1845, 431.

all* Every mulatto having one-fourth negro blood was likewise incapable of appearing against a white In the act respecting apprentices, in force June 1, 1827, it was provided that the child who was bound out should be taught reading and writing and the principles of arithmetic. However, it was added in a proviso, if the apprentice were a colored child, such education was not required.†

Section 158 of the criminal code (1833) shows in an indirect way another discrimination against the blacks. Here it is provided that no *white* female should be sentenced to stand in the pillory, thus implying that such punishment would be allowed in the case of a negro or mulatto woman.‡

These illustrations are sufficient to show what a large part negro legislation played in the history of the State. On the whole this legislation is not very creditable when viewed from the present, but it must be borne in mind that such laws were to a considerable degree characteristic of the time.

Although the constitutional convention of 1847 was not called to consider slavery measures, these played rather a large part in the convention proceedings. Slavery, as such, was prohibited, and in no such uncertain terms as in the first convention. Apparently the proposition was supported unanimously as there is no struggle recorded. As first presented in a resolution by Church of Winnebago§ it was as follows: "There shall be neither slavery nor involuntary servitude in this State, otherwise than for the punishment of crimes whereof the party shall have been duly convicted. Nor shall any person be deprived of liberty on account of color." As finally adopted the last sentence was omitted. Although the most of the people of the State were against slavery now, they were far from being abolitionists.

The discussion in the convention concerning negroes may be arranged under three heads: Citizenship and the right of suffrage; the "under-ground railway"; the immigration of free negroes.

Suffrage was to be exercised only by the whites. There seems to have been almost universal opposition to the idea of allowing the negro to vote. When a resolution was offered restricting suffrage to white male citizens—the restriction being primarily to citizens, Whitney of Boone moved to strike out the word white. Out of 185 there were only eight votes in favor of this || It was also voted that colored persons should never be allowed under any pretence, whatever, to hold office in this State.¶ Shortly after the convention met, Singleton of Brown presented a petition which strongly protested against the citizens of Illinois interfering with the slave property of adjoining states. Naturally, this was a blow at the workings of the

*Revised Laws of 1833, 496.

†Revised Laws of 1833, 70.

‡Revised Laws of 1833, 203.

§Convention Journal, 1847; 46.

||Convention Journal, 76.

¶Convention Journal, 463.

"underground railway" system, or "the Subterranean Underground railway" as it was then called. The hatred of this system, for it was fast coming to be that, was very great and no words were spared in condemning it.*

Probably the most important matter discussed was that concerning the restriction of negro immigration. Bond of Clinton, early proposed that there be adopted an article in the bill of rights prohibiting slave owners from bringing their slaves into the State for emancipation and prohibiting free negroes from settling in Illinois.† The next day a petition to the same effect was presented; later Church of Winnebago offered the following as an amendment to the bill of rights:‡ "The legislature shall pass no law preventing any citizen of any one of the United States from emigrating to and settling within this State." Eighty-nine voted against and 47 for it.

Rather than jeopardize the acceptance of the Constitution it was provided that the immigration clause be embodied in a separate article, and thus submitted to the people. The vote upon the Constitution proper was: for adoption, 59,887; for rejection, 15,859. The vote on Article XIV (immigration clause) was not so large, being 49,066 for and 20,884 against.§ This Article was much opposed in the northern part of the State, especially in Cook county.

It might be presumed that the negroes were rather harshly treated at this time (1847) for there were several petitions presented in their behalf. These generally prayed that the principles of the Declaration of Independence be extended, and that protection and security be granted irrespective of color.

An amendment to one of the immigration propositions provided: "That the legislature shall have no power to pass laws of an oppressive character applicable to persons of color." This failed to pass by a vote of 92 to 46 ||

Compared with the constitution of 1818 there are two differences to be noted: there is no question that the new Constitution prohibits slavery; secondly, free negroes are to be prevented from settling in the State by a law which was to be passed by the legislature at its next session. It may well be doubted whether the new Constitution was more liberal than the old, for while the blacks gained in one respect they lost in another. If the negro no longer was subject to bondage he still remained the butt of abuse and oppression.

The Constitution provided, as above noted, that a law prohibiting the immigration of free negroes be passed at the next meeting of the General Assembly. Accordingly in the Senate in 1849 a bill to that effect was drawn up. When the bill came up to be engrossed for third reading Mr. Judd of Cook moved to lay it upon the table ¶ His motion, however, failed by a vote of 16 to 8, whereupon he proposed

*Convention Journal, 95.

†Convention Journal, 92.

‡Convention Journal, 458.

§Davidson and Stuvé: 650.

¶Convention Journal: 192.

¶Senate Journal, 1849: 227.

as an amendment the repeal of Chapter 74 of the Revised Statutes. The chapter contained the "black laws." His motion was lost. Reddick of La Salle then offered* as an additional section a portion of the Declaration of Independence—"that all men are created free and equal." This also, strange to say, was promptly tabled. By a vote of 13 to 12 the bill was ordered to a third reading and finally passed the Senate by the same vote.† After the passage Mr Reddick and Mr. Ames of McHenry took occasion to become slightly sarcastic. The former proposed the title of the bill be changed to "An act for a crusade by a Christian State against negroes." The latter desired a quotation from the Federal Constitution as the title: "An act declaring citizens of each State to be entitled to all privileges and immunities of the citizens of the several States"‡ The bill was lost, as it failed to pass in the House by the vote of 34 to 31.§

Another attempt|| was made in the next meeting of the legislature—the Seventeenth General Assembly, which met Jan. 6, 1851. But after being referred to the judiciary committee it was lost sight of.

In 1853 still another attempt was made, which proved successful. It was first introduced in the House and passed without difficulty. When it came up for third reading another unsuccessful effort was made to secure the repeal of the "black laws." The vote on the bill when it came up for passage in the House stood 45 for and 23 against.¶ Nixon of McHenry, thought that the title of the bill should be "an act to create an additional number of abolitionists in the State, and for other purposes." The vote in the Senate was much closer, the vote standing 13 to 9.** Judd thought that a truer title would be "An act to establish slavery in this State"

The provisions of this act of 1853 deserve special examination. Anyone aiding a negro, bond or free, to secure settlement in Illinois was to be fined not less than \$100 00 or more than \$500 00, and was to be imprisoned in the county jail not longer than a year. The negro was to be fined \$50.00 if he stayed in the State ten days with the purpose of continuing his residence here. Upon failure to pay the fine he was to be arrested and to be advertised for ten days by the sheriff and then sold to the person who would pay the fine and costs for the shortest term of service. During this period the temporary owner was to work the negro at his pleasure. The prosecuting witness was to receive half the fine imposed ††

There were several attempts to make this law more stringent. In 1857 an amendment was introduced in the House and got as far as a third reading before it was dropped †† In 1861 a resolution was introduced in the House asking for a more effective law. This was adopted by a

*Senate Journal, 1849: 227.

†Senate Journal, 1849: 269.

‡Senate Journal, 1849: 271.

§House Journal, 1849: 476.

¶Senate Journal, 1851, p. 31, 38.

¶House Journal 1853, 443.

**Senate Journal, 1853, 475.

††Laws of Illinois, 1853, 57-60.

‡‡House Journal, 1857; 446.

vote of 65 to seven * The constitutional convention of 1862 decided "that no negro or mulatto shall migrate to or settle in this State after the adoption of this constitution"† and this clause was ratified by the people though the constitution as a whole was defeated. In 1863 a final effort to make the law more effective failed in the Senate although endorsed by the House.‡

In 1853 Nixon of McHenry tried to get a bill passed which would enable colored persons to give testimony § But this was tabled by a large vote. In 1855 a resolution was presented by Representative Diggins of Boone county denouncing the policy which denied colored tax payers the right to send their children to the public schools. || This was also tabled.

During this decade, 1850-1860 the feeling on the slavery question in national politics grew more and more intense and the hope of a peaceable settlement became more remote. This struggle was reflected much in the different states, finding expression in the state legislatures. This was especially true in Illinois where each faction had ardent supporters. In 1849 Haven, a representative from Kendall county offered a resolution embodying these recommendations: ¶ 1. That Congress should abolish slavery in the territories; 2. All United States laws sanctioning slavery in the District of Columbia or elsewhere should be repealed. That the resolutions were not in favor is shown by the fact that they were laid on the table by a vote of 40 to 24 ** In the preceding, or regular session, the two houses adopted a resolution which instructed our congressmen to use their influence "to procure the enactment of such laws by Congress for the government of the countries and territories of the United States, acquired by the treaty of peace, friendship, limits and settlement with the Republic of Mexico concluded Feb. 2, 1848, as shall contain the express declaration that there shall be neither slavery nor involuntary servitude in said territories, otherwise than in the punishment of crimes whereof the party shall have been duly convicted. ††

The next General Assembly met Jan. 6, 1851, and on the very first day, Shaw, of Lawrence, started a discussion by offering a series of resolutions on the slavery question ‡‡ These were pro-slavery in tone. Four points were embodied therein: 1. That it was inexpedient and unconstitutional for Congress to interfere with domestic slavery in the different states; 2, that the resolutions passed at the preceding session should be repealed; 3, that the compromise measures (of 1850) should be endorsed; 4, that the Federal Constitution ought to be upheld. To show how strongly these sentiments appealed to

*House Journal, 1861: 51.

†Convention Journal, 1862: 1098.

‡House Journal, 1863: 500.

§House Journal, 1853: 145-6.

||House Journal, 1855: 268.

¶ and **House Journal, 1849: 27.

††Senate Journal, 1849 (1st session) 50; House Journal, same session, 55.

‡‡House Journal 1851: 6.

Shaw's colleagues it is but necessary to give the vote upon a motion to lay the resolutions on the table—28 for and 45 against. Thereupon the whole matter was referred to a special committee about equally divided as to northern and southern members.* Besides concurring with Shaw, the report endorsed the fugitive slave law recently passed by Congress. After lying upon the table for some time the report came up again Jan. 22. A new resolution† was added to the effect that no limitations should be placed upon the organization of a Territorial or State government other than that it should be republican in form, and in harmony with the Constitution. The set was adopted by sections, the opposition being small, the greatest disagreement being to the fugitive slave law and to the repeal of the resolutions offered at the preceding session, the vote being the same for each, 54 to 15. Similar resolutions were drawn up in the Senate‡ and adopted, the chief opposition here being to the Wilmot proviso clause, the vote standing 18 to seven. In the other sections the vote generally was 21 to four, or 22 to three.

From now on to the beginning of war, the all-prevailing tone of the resolutions on national affairs was that of peace, the maintenance of the Union and the complete suppression of slavery agitation. Any attempt to disturb the critical state of affairs was denounced. In 1855 and 1856 resolutions of this nature and purpose were adopted § In 1859. Higbee, a Senator from Pike county, in a number of resolutions|| set forth the platform of the Democratic party. The planks of this which referred to the slavery question were anything but anti-slavery in aspect. Abolition movements were denounced, the compromise of 1850 including the objectionable fugitive slave law, was upheld. The Dred Scott decision was accepted as just, while Lincoln's claim that the Union could not continue to exist partly free and partly slave, was ridiculed. The Kentucky and Virginia resolutions of 1798 and 1799 were declared important foundations in the party's creed. Higbee's resolutions were accepted, 14 to 11 being the vote. Two days later there was a motion to reconsider this matter, but it was deferred until Feb. 7. On that day Marshall, of Coles, offered a number of resolutions as substitutes for those presented by Higbee ¶ He began by stating that he considered the slavery question not merely one of dollars and cents. After this he gave a brief outline of the history of slavery in the United States. He maintained the government should not reject a state constitution even if it did sanction slavery—provided it were republican in form. With this exception his resolutions were strongly anti-slavery. The vote resulted in a tie and the Speaker cast his vote in favor of the resolutions. Higbee's resolutions thus amended were objection-

*House Journal 1851; 71.

†House Journal 1851; 126.

‡Senate Journal 1851; 4. 53.

§House Journal, 1855; 235; Senate Journal, 327; Senate Journal, 1857; 323-4.

||Senate Journal, 1859; 194-7.

¶Senate Journal, 1859; 228.

able and his party rejected them by a vote of 12 to ten.* The House also during this session (1858-9) took an active interest in national politics. Davis,† of Montgomery, introduced a set of resolutions which were adopted by sections. Loyalty to the Union was expressed; popular sovereignty endorsed; constant agitation of the slavery question denounced; non-intervention of slavery in the states and the admission of a state irrespective of slavery were recommended; lastly it was declared that admission ought not to be denied a state if the latter prohibited the immigration of free negroes. The vote on this last clause was, for, 65, against, three.

In 1861, in an attempt to do something to prevent civil war, resolutions were offered in the Senate recommending that a national convention be held to propose amendments to the constitution‡ Another scheme was that Congress should enact several compromise measures which should provide that slavery should not be interfered with where it already existed, and that popular sovereignty should settle the question in new states§ No action was taken respecting these resolutions.

The Twenty-fourth General Assembly met Jan. 2, 1865. On the next day|| a bill was introduced for an "Act to repeal certain statutes known as the black laws." When the bill came up for third reading, Jan. 24, McConnell of Morgan, moved that the act of 1853 be not included in the number to be repealed. His motion was lost, 13 to ten¶ The bill finally passed the Senate by the same vote, while in the House 45 supported it and 31 were against it.** The actual repeal of the "black laws" did not, however, take place until 1865.

Feb, 1, 1865, Illinois ratified the Thirteenth amendment, being the first state to do so. On Feb. 7, the black laws were repealed. What did the expression "black laws" mean at that time? The law repealing these statutes provided that sections 16 of chapter XXX and 23 of chapter XL of the revised statutes of the State be repealed together with the chapter on negroes (LXXIV) and the act of Feb. 12, 1853.†† The first two sections above, referred to the prohibition of negroes acting as witnesses against white men‡‡ The act of 1853 prohibited the importation of free negroes. Chapter LXXIV included all the remaining restrictions against negroes.§§

The revised statutes referred to here were compiled in 1845. At that time the acts of 1819, 1829, 1831, 1833, and 1841 were repealed and the above chapter substituted. It might be interesting to know what changes were made at that time. Practically all of the act of

*Senate Journal, 1859; 229-230.

†House Journal, 1859; 689.

‡Senate Journal, 1861; 16.

§House Journal, 1861; 112.

||Senate Journal 1865; 67.

¶Senate Journal, 1865; 261-2.

**House Journal, 1865; 354.

††Public Laws of 1865; 105.

‡‡Revised Statutes (1845) Sec. 16, on p. 154; Sec. 23, on p. 237.

§§Revised Statutes (1945); 387.

1819 is retained and the sections respecting the kidnapping of negroes and the selling of intoxicants to them are found in the criminal code. All of the act of 1829 except the third section which dealt with the inter-marriage of whites and blacks (and which is found in section two of the chapter on marriages*) is retained. The act of 1832 is omitted and in its place was included a portion of the act of 1831 which dogmatically declared that anyone guilty of the offence of bringing a slave into the State in order to free him should be fined \$100†. The gist of the act of 1841—regarding the registration of resident free negroes—was included in section four of the new chapter. In short, the revised statutes of 1845 were more stringent against negroes than those laws for which they were substituted.

Thus ended with the repeal of these laws, the legal discrimination against the negro in Illinois. It would seem that this was a tardy piece of legislation. And yet repeated efforts were made to annul these laws. It is claimed‡ that with the exception of the act of 1853 these laws were long regarded as a dead letter. Ford thinks§ that they would have been repealed long before had it not been for the abolition excitement which rendered it dangerous for a politician to propose such a thing being done, since such an act might have branded him as an abolitionist.

Washburne|| in his "Sketch of Edward Coles" in accounting for this indifference says that the pro-slavery sentiment which found a lodgement in the State was vastly stronger from 1825 to 1851 than it was in 1824 when the movement toward the legalization of slavery was blocked. From the study that has been made it would seem that the last estimate is *most* correct. The act of 1853 or even the amendment of 1831 shows that there existed not only indifference to the negro but antagonism as well. The people of Illinois were willing that the condition of the blacks in the far south should be ameliorated, but were unwilling to do anything that might make the State a haven of refuge for fugitive slaves.

*Revised statutes of 1845: 353.

†Revised statutes of 1845: 389.

‡Davidson and Stuvé: 318.

§Ford's History of Illinois: 34.

||Washburne: Sketch of Edward Coles: 239.